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June 24, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 13, 2007

Case Number: TSO-0586

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") for access authorization. This decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should be restored.

I. APPLICABLE REGULATIONS

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Under Part 710, the Department of Energy (DOE) may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *See* 10 C.F.R. § 710.27(a). The ultimate decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

II. BACKGROUND

The Individual is an employee of a contractor at a DOE facility and has held a security clearance since 1981. In 2005, as part of a routine reinvestigation, the Individual completed a Questionnaire for National Security Positions in which she stated that she had used marijuana once in June 2003. Prompted by this response, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the Individual in July 2007. As a result of its investigation, the

LSO discovered that the Individual's spouse had been arrested in 1998 for possession of marijuana.

In November 2007, the LSO notified the Individual in a Notification Letter that her admitted one-time use of marijuana constituted derogatory information that created a substantial doubt as to her eligibility for an access authorization under 10 C.F.R. § 710.8(k) (Criterion K). The Individual's use of marijuana while holding a security clearance and after signing two security acknowledgment forms constituted derogatory information that created a substantial doubt as to her eligibility for an access authorization under 10 C.F.R. § 710.8(l) (Criterion L). The Individual's failure in a September 2000 PSI to disclose upon questioning that she had associated with a person (i.e., her husband) who had used illegal drugs was also cited as Criterion L derogatory information. November 2007 Letter from Manager, Personnel Security Division, to Individual (Notification Letter).¹

I held a hearing in this matter. At the hearing, DOE presented no witnesses. The Individual offered her own testimony along with the testimony of her husband, her sister, a supervisor, three co-worker friends, a neighbor and a long-time friend. The DOE submitted 22 exhibits (Exs. 1-22) for the record. The Individual submitted 92 exhibits (Ind. Ex. A-1 to H-1).²

III. FACTUAL FINDINGS

A brief summary of my factual findings in this case are provided below.

The Individual has been employed by a contractor at a DOE facility since 1980 and has held a security clearance since 1981. DOE Exhibit (Ex.) 14 at 3; Ex. 7.

In 1998, the Individual's spouse was arrested for possession of marijuana while on an out-of-state business trip. Ex. 3; Tr. at 123-24. The charges were subsequently dropped. Tr. at 124-25.

In 2000, the LSO conducted a Personnel Security Interview (2000 PSI) with the Individual. In this interview she was asked if she had ever associated with individuals "involved in illegal drug activity." Ex. 20 at 20. She replied "no." Ex. 20 at 20. Later in the interview, she was asked "[i]s there any reason that . . . information would indicate that there may have been a member of your immediate family that was involved with an arrest for the possession of marijuana." Ex. 20

¹ Criterion K refers to information indicating that an individual has "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances . . . (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.)." 10 C.F.R. § 710.8(k). Criterion L concerns information indicating that an individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress . . ." 10 C.F.R. § 710.8(l).

² The DOE Counsel objected to the inclusion of a number of these Exhibits into the record of this hearing. At the hearing, I rejected the inclusion of Exhibits A1, A9, B1, B2 and B3 into the record. These Exhibits were offered to support the reasonableness of the Individual's belief (discussed *supra*) that, at the time she smoked the marijuana, she thought it was legal to use it because she was using the marijuana for a medical purpose (to relieve her migraine headache). The Exhibits consisted of news items and web sites published on various dates discussing the legalization of marijuana for medical purposes. These Exhibits were rejected on the basis of lack of relevance since these items did not exist until after the date (2003) the Individual used marijuana. *See* Transcript of Hearing (Tr.) at 234-240.

at 22. The Individual replied that her spouse had told her that a number of years ago that while he was in the military they found some marijuana in his locker. Ex. 20 at 22. When asked if she had any knowledge of an arrest in 1998 of her husband for marijuana possession, she stated that her husband had been on travel for the past three years and that if there had been an incident her spouse had not told her about it. Ex. 20 at 23. During this PSI, she admitted that she had previously affirmed that DOE had security concerns regarding clearance holders who associate with individuals who are involved with illegal drugs and that a clearance holder who condones the use of illegal drugs by others could be subject to loss of employment. Ex. 20 at 27-28.

In April 2003, the Individual requested a medical leave of absence from her employer due to her suffering from frequent bouts of debilitating migraine headaches. Tr. at 9, 172. The Individual had tried a number of prescriptions to treat the headaches but none of the medications prescribed provided relief from the headaches. Tr. at 9. On Saturday night, May 31, 2003, or Sunday morning June 1, 2003, the Individual was stricken with a severe migraine headache. Tr. at 192-93. The Individual's husband suggested that the Individual try smoking a marijuana cigarette to ease the pain of her migraine headache. Tr. at 193. Her husband obtained some marijuana from a friend of a friend and rolled a cigarette for the Individual to use. Tr. at 121-22. The Individual, after being shown how to inhale the marijuana cigarette, smoked approximately one-half of the cigarette. Tr. at 121-22, 155. The Individual did not obtain any relief from the pain of her migraine headache as a result of the marijuana cigarette. Tr. 194-95.

On the following Monday, June 2, 2003, the Individual entered an outpatient clinic for treatment of her migraine headaches. Tr. at 191-92; Ex. 19 at 28-31; Ex. 22 at 49, 58-59. A blood toxicology test administered to the Individual upon entering treatment tested positive for marijuana. Ex. 22 at 59.

IV. HEARING TESTIMONY

At the hearing, the Individual presented witnesses to support her response to the allegations referenced in the Notification Letter. The Individual's principal arguments to mitigate the concerns are: (1) at the time of her one and only use of marijuana, she was suffering from a severe migraine headache and, in her reasonable belief that medicinal use of marijuana for medicinal purposes was legal in the state of her residence, she used it to alleviate her severe headache; (2) she did not immediately report her use because she thought the use was lawful and she was on a medical leave of absence; (3) her one-time marijuana use in 2003 is the only occasion that she has used an illegal drug; (4) in the 2000 PSI, she did not report her husband's 1998 arrest for possession of marijuana because she had no prior knowledge of the arrest; and (5) to the extent that her husband's use of marijuana is an issue, he has stopped using marijuana and has committed to not using it in the future.

The Individual's supervisor in 2003 testified for the Individual. He testified that, at the time the Individual requested a medical leave of absence in 2003, she was having a problem with migraine headaches. Tr. at 30-31. He was not aware that the Individual had smoked marijuana until the day before his testimony. Tr. at 34-35. He was not aware of any other illegal drug usage by the Individual. Tr. at 35. He had attended "team celebrations" with the Individual and on those occasions had never observed her impaired by illegal drugs or observed her discussing

illegal drugs. Tr. at 35-36. He also testified as to the Individual's excellent job performance. Tr. at 36.

A co-worker friend of the Individual, who has known the Individual since the early 1990s, testified that he remembered that the Individual had taken medical leave. Tr. at 43. After the Individual came back from medical leave, he worked with her frequently on a very important project at the DOE facility. He stated that the Individual had played a key role in the success of the project. Tr. at 44-45. Until being informed as to the Individual's use of marijuana two weeks prior to his testimony, he never had any knowledge of any illegal drug usage by the Individual. Tr. at 44, 51. Further, he had never observed any behavior by the Individual that would cause him to suspect that the Individual was using illegal drugs. Tr. at 45.

Another co-worker (Co-worker II) testified that she had known the Individual for 26 years. Tr. at 54. For the past five years, she has been directly working with the Individual on a project at the DOE facility. Tr. at 55. She testified that, in 2003, the Individual was having problems with migraine headaches. Tr. at 55. She also recalled that the Individual described the symptoms of her headaches as being frequent and very painful. Tr. at 55-56. During this time, Co-worker II noticed that the Individual was losing weight. Tr. at 57. After she returned from her medical leave of absence, the Individual was much improved both physically and mentally. Tr. at 58. Co-worker II further testified that the Individual possessed "high integrity" and integrity "beyond that" of most employees at the DOE facility at which they worked. Tr. at 58-59. Apart from being told two months prior to her testimony about the Individual's use of marijuana, Co-worker II was unaware of any use of marijuana by the Individual. Tr. at 61, 67-68.

Also testifying for the Individual was another co-worker (Co-worker III) who has known the Individual since 2001 or 2002. Tr. at 161. Co-worker III recalled that the Individual had suffered from migraine headaches during 2003 and eventually went on medical leave. Tr. at 161-62. He also testified that the Individual's did not have a problem with migraine headaches after returning from medical leave in 2003. Tr. at 162. He believes that the Individual is a very trustworthy and reliable. Tr. at 163. He knew the Individual's husband socially through various social events and found him to a pleasant, polite person and noticed nothing "unusual" about him. Tr. at 164.

One of the Individual's neighbors testified that he has lived next to the Individual for 14 years. Tr. at 75. In those 14 years, he has attended a number of social events at the Individual's house. Tr. at 75-76. Additionally, his daughter has cared for the Individual's child. Tr. at 76. The neighbor has never seen any evidence that the Individual has used illegal drugs. Tr. at 77. Further, the Individual's family does not have any reputation in their neighborhood for using illegal drugs. Tr. at 77. If the neighbor believed that the either the Individual or her husband used illegal drugs, he would not allow his daughter to go to the Individual's house. Tr. at 77. He would trust his house to the care of the Individual when he and his family would go out of town. Tr. 78-79.

The Individual's best friend testified that she has known the Individual since 1970. Tr. at 82. She sees the Individual in person approximately once a month and talks to her by phone every day or every other day. Tr. at 83. She was aware of the significant problem that the Individual had with

migraines and that the Individual tried a number of prescription medications without success. Tr. at 85. Once the Individual completed the outpatient program, the Individual's physical condition improved. Tr. at 92. She also testified that the Individual's attitude toward drugs is that unless the drug is prescribed, she would not use it. Tr. at 86. Further, the Individual is reluctant to take medication unless absolutely necessary. Tr. at 91. The best friend also testified that she has never observed the Individual using illegal drugs. Tr. at 88. She has held the Individual up to her children as a role model. Tr. at 89.

In her testimony, the Individual's sister confirmed that the Individual suffered from migraine headaches and that on the one occasion she witnessed the Individual suffering from such a headache, the Individual was incapacitated. Tr. at 101, 109. She also testified that the Individual was always very responsible and as they were growing up would see that her homework was done and always remind her that she should not use illegal drugs. Tr. at 101. She looks up to the Individual as a role model and believes that the Individual is very honest and possesses integrity. Tr. at 107. She never saw any evidence that the Individual's husband had ever used illegal drugs and she was unaware that he had been arrested for possession of marijuana. Tr. at 102, 106.

The Individual's husband testified that he had been married to the Individual for 16 years. Tr. at 112. The Individual's husband testified that during late 2002 and 2003, the Individual had been suffering from a great deal of stress from work and was suffering from "bad migraines" lasting from 10 to 12 hours, involving nausea, vomiting and light and noise sensitivity. Tr. at 119-20. He testified that the Individual tried a number of medications which did not help her migraine headaches. Tr. at 120. During this period, he and the Individual discussed the "benefits of marijuana" with regard to the relief of pain prompted in part by TV and newspaper articles they had seen. Tr. at 121.

With regard to the one incident where the Individual used marijuana, the Individual's husband testified that the Individual was having a migraine headache and that he suggested that marijuana may help relieve the pain she was experiencing. Tr. at 121. He testified as to his and the Individual's belief that use of marijuana for medical purposes was legal at the time in the state they resided in as well as in other states. Tr. at 121. When the Individual agreed to try the marijuana, he went out to see a "friend of a friend" to obtain some marijuana. He then rolled the marijuana into a cigarette and demonstrated how to smoke it since the Individual had not smoked before. Tr. at 121-22, 155-56. If the marijuana cigarette had provided the Individual some pain relief, their plan was for the Individual to ask her physician for a prescription for marijuana. Tr. at 123, 155. However, the Individual did not experience any pain relief from the use of the marijuana. Tr. at 123. This occasion was the only time that the Individual's husband had seen the Individual use marijuana. Tr. at 123.

The Individual's husband also testified to his own marijuana use. In 1998 he was arrested for possession of marijuana while in another state. Tr. at 124. While on travel for his employer, he obtained a marijuana cigarette and smoked it in his hotel room. Tr. at 124. Hotel security detected the smoke and called the police. Tr. at 124. The Individual was arrested for possession but the charges were later dropped. Tr. at 124.³ He did not inform his wife about this arrest

³ The Individual's husband also confirmed in his testimony that in 1978, while in the military, a small amount of marijuana was found in his footlocker, and he was subject to a non-judicial "Captain's Mast" punishment under the

because he “knew it would upset her, because she doesn’t condone it . . .” Tr. at 125. In May 2007, the Individual’s husband stopped using marijuana because he wanted to set a good example for his son, because of his loss of interest in marijuana, and because he realized his involvement with marijuana could jeopardize the Individual’s continued employment. Tr. at 126, 156-57. Prior to that date he was an “occasional” user of marijuana but took pains not to smoke it in the Individual’s presence or in their house.⁴ Tr. at 126, 129, 136. During the period he smoked marijuana (a period of approximately 25 years), he would smoke marijuana approximately once a week but would have periods of six to eight months where he would not use marijuana. Tr. 140. He has not sold any other type of illegal drug nor used any other illegal drug other than marijuana. Tr. at 129. Since stopping use of marijuana, the Individual has not associated with any person known to use illegal drugs. Tr. at 129. His intention is to never consume marijuana again. Tr. at 132-33.

If required to restore the Individual’s security clearance, the Individual’s husband testified that he would be willing to undergo random drug testing. Tr. at 128. In this vein, the Individual has submitted the results of two urine drug tests conducted on the Individual’s husband on January 2008 and February 2008 (the two months before the hearing). *See* Ind. Ex. D-2 and D-3. All were negative for the presence of cannabinoids (the active drug in marijuana) as well as for the presence of opiates, cocaine, amphetamines and phencyclidine. The Individual’s husband feels that he is, in part, responsible for the incident that resulted in this hearing. Tr. at 132.

Lastly, the Individual testified. She testified that in 1987, she began to suffer from infrequent migraine headaches. Tr. at 168. During the period November 2002 to 2003, her headaches became much more frequent as she was working increasingly more hours. Tr. at 172-73. The Individual tried a number of prescribed medications without success – Zomig, Imitrex, Fioricet, Depakote, Wellbutrin, Effexor and Prozac. Tr. at 176-84. Eventually, at the end of April 2003, the Individual went on a medical leave of absence lasting to the middle of July 2003. Tr. at 172.

Just prior to her entering treatment at an outpatient facility on late Friday night, May 31, 2003 or early Sunday morning, June 1, 2003, the Individual testified that she experienced another migraine headache and suffered from extreme pain. Tr. at 193, 195. At this time, she recalled her prior research concerning the medicinal use of marijuana and prior discussions with her husband concerning the medical use of marijuana. Tr. at 193. She remembered saying to her husband words to the effect “I wish I had some medicine to resolve this.” Tr. at 193. She then went on to testify

So my husband had a marijuana cigarette, and he said, “Well, you know, we talked about this. Do you want to try it?” At that point in time, again, the pain is so debilitating, you just want to resolve it. I agreed that I thought it had some medicinal value, let’s try it, and if it worked, you know, perhaps maybe we could

Uniform Code of Military Justice. Tr. at 134, 146. He also testified as to another incident where he was “stopped” and found to possess marijuana in 1981 or 1982. Tr. at 134.

⁴ The Individual’s husband recounted one time in 1986 where the Individual observed him smoking a marijuana cigarette and then became very upset with him for this conduct. Tr. at 126. He further testified that she raised a concern to him that his use of marijuana could affect her security clearance. Tr. at 153.

find some medicine that ultimately would help relieve these migraines. So he produced the cigarette. He kind of explained to me how I needed to smoke it, because I've never been a cigarette smoker or anything like that. You know, he had kind of observed me just kind of puffing on it, and he goes, "No, you need to inhale it, because you need to get that component into your blood system if it's going to work, so I want you to inhale deeply so that we can get -- you know, if it's going to work, you know, to make sure that we get it where it needs to be to work."

Tr. at 193-94. The Individual failed to get any relief from the portion of the marijuana cigarette she smoked. Tr. at 194-95.

In her testimony, the Individual asserted that apart from the one incident described above, she has never smoked marijuana at any time in her life. Tr. at 195-96. Further, her intention is to never smoke marijuana again. Tr. at 196.

The Individual also testified with regard to her belief at the time she used the marijuana that her state of residence had enacted a medical marijuana law authorizing the medicinal use of marijuana. Tr. at 190. The Individual stated that before her one time use of marijuana, she had performed internet searches for information regarding its medicinal use especially for migraine headaches. Tr. at 196, 207, 219-220.

With regard to the Notification Letter's allegations concerning her failure to reveal that she had associated with a person who used marijuana, the Individual testified that as of the date of the 2000 PSI she had no knowledge of her husband's 1998 arrest, and only learned of the arrest at the interview itself. Tr. at 198-99. Further, since they have been married, she had never observed her husband using marijuana and did not know he was, in fact, using marijuana, with the exception of the 2003 incident. Tr. at 199-200. She testified that in 1985, while they were dating, she had observed him smoke marijuana at a party. Tr. at 201. After they left the party, the Individual informed him that she did not condone such behavior. Tr. at 201. She stated that at the 2000 PSI she did not recall the incident given the length of time that had elapsed. Tr. at 202.

She also testified regarding the Notification Letter's allegation that, despite having signed various security acknowledgments, holding a security clearance, and having acknowledged DOE's concern with illegal drug use and association with those who use drugs, she voluntarily used marijuana in 2003. The Individual testified that when she used the marijuana in 2003, she believed that the DOE's concerns were intended for those who use illegal drugs for recreational purposes and not for medicinal purposes, and that her use of marijuana complied with the law. Tr. at 206, 210. She now realizes that her use of marijuana was in fact illegal. Tr. at 210. When she used the marijuana, she used it only for the medicinal purpose of attempting to relieve her migraine headache. Tr. at 206-07. She also testified that at the time of her use of marijuana, she was on a medical leave of absence and thus did not believe that she needed to report the marijuana use to the LSO, especially since the use was for medicinal purposes. Tr. at 208. Additionally, to justify not immediately reporting her use of marijuana, she stated that at the time of her medical leave of absence she believed her clearance was suspended while she was on leave, although she also stated she had no documentation to support her belief. Tr. at 211.

V. ANALYSIS

A. Criterion K Concern

It is beyond dispute that the use of illegal drugs raises security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0104*, 26 DOE ¶ 82,758 at 85,556 (1996) (“[A]ny involvement with illegal drugs demonstrates a disregard for the law. In addition, an individual who uses and/or sells illegal drugs opens himself to blackmail or other forms of coercion”). Furthermore, drug use calls into question the user’s judgment and reliability. *See, e.g., Personnel Security Hearing, Case No. VSO-0023*, 25 DOE ¶ 82,761 at 85,579 (1995) (“any drug usage while the individual possesses a [security] clearance and is aware of the DOE’s policy of absolute abstention demonstrates poor judgment”). Given the Individual’s admitted use of marijuana, the LSO had sufficient grounds to invoke Criterion K.

After examining all of the evidence in the record and considering the testimony presented at the hearing, I find that the Individual has presented sufficient evidence to mitigate the Criterion K concern relating to her marijuana use. I find the Individual’s testimony concerning the extent of and reason for her marijuana use to be credible and supported by the other presented testimony as well as the record in this case. The Individual’s testimony is consistent with the explanation she presented at a 2007 PSI. The testimony and evidence in the record indicate that the Individual’s use of marijuana was an solitary incident that occurred almost five years before the date of the hearing. The testimony and the submitted medical records provide substantial documentation of the Individual’s history of severe migraine headaches. The testimony also indicates that the primary motivating factor in the Individual trying marijuana was her severe migraine headache on May 31 or June 1, 2003. Her use took place at a time when all other previously prescribed medication had not worked. Supporting my conclusion is a written psychiatric evaluation of the Individual that has been submitted into the record. This evaluation by a licensed clinical psychologist stated that, in his examination of the Individual, he had administered the Substance Abuse Screening Inventory III (SASSI), among other tests, to the Individual and that the results of the test indicated that the Individual had a “low probability of having a substance dependence disorder.” Ind. Ex. H-1 at 3. The psychologist went on to state

With respect to her use of drugs, there seems to be no reason to conclude that her report of the one time use of marijuana for the reason she states is less than truthful. [The Individual’s] “track record” as an employee of [the DOE contractor] is reportedly quite good and she has a 27 year history in support Further, the test data and interview data point[s] to the notion that [the Individual] is a relatively straight-laced person who does not break rules.

Ind. Ex. H-1 at 5. Further, with the disclosures she has made to her friends and coworkers concerning this incident, there is little possibility that her one-time use could be used for coercion.⁵

⁵ I also find that, at the time the Individual smoked the marijuana, she had an *actual, subjective* belief that her state of residence had enacted a medical marijuana statute. *See* Tr. at 190. Her testimony at the hearing on this point is supported by the fact that, prior to her use of marijuana, the legislature of the state had voted on, but not enacted, a statute to provide for the use of marijuana for medical purposes. *See* Ind. Ex. I-1 and I-2. After the Individual’s use of marijuana, the state did eventually enact legislation to allow for the possession of marijuana for medical use under certain conditions. Notwithstanding the discussion above, even if a state passes a statute authorizing the medicinal

Given the solitary nature of, and the pain-reduction motivation for, the marijuana use, the testimony of the witnesses, the lack of evidence that the Individual has used marijuana at any other time, as well as the evidence provided in the psychologist's report, I find that the Individual has mitigated the Criterion K concern. *Cf. Personnel Security Hearing, Case No. TSO-0271*, 29 DOE ¶ 82,877 (2005) (Hearing Officer found mitigation of Criterion K concerns raised by the conduct of an individual who illegally obtained prescription narcotics to alleviate severe pain from arthritis, after evidence was introduced that the Individual received effective treatment for his condition, and hearing expert testimony indicating that individual was not psychologically addicted to narcotics).

B. Criterion L Concern

With respect to the Criterion L concerns regarding the Individual's trustworthiness and reliability, the Notification Letter cites the Individual's initial negative response in the 2000 PSI, when asked if she had been involved with illegal drugs or had associating with individuals who use or are involved with illegal drugs. Additionally, it cites the Individual's decision to use marijuana in 2003 despite holding a security clearance and having signed DOE security acknowledgment forms that state that involvement with any illegal drug could result in the loss of her DOE security clearance. Given the Individual's admitted marijuana use while holding a security clearance and the apparent failure to be forthcoming regarding her association with a person who had involvement with illegal drugs, the LSO had sufficient ground to invoke Criterion L. Failure to provide accurate information during a PSI as well as use of marijuana while holding a security clearance potentially raise doubts of an individual's judgment and reliability. Significantly, the use of marijuana violates federal law. An individual's disregard for law raises questions about the individual's reliability and judgment. *See Personnel Security Hearing (Case No. VSO-0099)*, 26 DOE ¶ 82,759 (1996). However, after reviewing the testimony and other evidence in this case, I find that the Individual has mitigated the Criterion L concerns.

With regard to the allegation that the Individual was less than forthcoming concerning her answers in the 2000 PSI regarding association with persons involved with illegal drugs, I find that there is sufficient evidence for me to conclude that the Individual did not know about her

use of marijuana, federal law would still make possession of the marijuana illegal. *See Gonzales v. Raich*, 545 U.S. 1 (2005) (Drug Enforcement Agency seizure and destruction of marijuana pursuant to the federal Controlled Substances Act found to be valid despite the fact that the California residents who had possessed the marijuana claimed that such possession was permitted pursuant to California's Compassionate Use Act).

While I find that the Individual had had an actual, subjective belief that her use of marijuana was legal, this is not to say that I find her position to be totally consistent. From her testimony, her understanding of the "statute" required a physician's prescription for lawful use of marijuana yet she did not have such a prescription. Nevertheless, despite this minor inconsistency, I find the Individual's overall testimony to be forthright and am persuaded of her own subjective belief in the legality of her use of marijuana.

husband's 1998 arrest for marijuana possession at the time of the 2000 PSI. I found the Individual's testimony credible. Further, other testimony regarding the Individual's generally negative view about marijuana use gives support to the Individual's husband's testimony that he made a decision to hide the arrest from his wife as well as his testimony that he hid his marijuana use from his wife. The fact that the arrest occurred in a state different from where they live also gives credence to the Individual's and her husband's testimony concerning the 1998 arrest.

Upon prompting during the 2000 PSI, the Individual did remember that her husband had been found with marijuana while a member of the military. I do not believe that this was an attempt to deceive the interviewer. The incident, of which she had no personal knowledge, had occurred some 20 years earlier. Moreover, upon prompting by the interviewer, she readily recalled what she knew about the incident and she freely discussed it with the interviewer. Consequently, I find no real security concern arising from her failure to initially remember the incident. It is true that the Individual did not reveal another incident occurring in 1985 in which she believed her husband had smoked marijuana at a party.⁶ However, the incident occurred approximately 15 years prior to the 2000 PSI. Consequently, I find the Individual's testimony that she did not remember the incident believable.⁷

To the extent that the Individual's conscious one-time decision to smoke marijuana raises a security concern under Criterion L, I find that the concern has been resolved. As discussed in the previous section, I find that the Individual's lapse in judgment in using marijuana was a solitary event which occurred almost five years ago. Further, the Individual's use of marijuana was prompted by her severe migraine headaches and she has now received effective treatment for these headaches. I also find that the Individual has been honest in discussing her and her husband's prior drug usage. Given the unique situation which prompted the Individual's solitary use of marijuana, her honesty in discussing the incident, along with the reasons discussed with respect to Criterion K, I find that the Criterion L security concern related to her use of marijuana is unlikely to reappear.

With regard to the fact that the Individual smoked marijuana after signing a security acknowledgment form, it is clear that by signing the form the Individual indicated her understanding she was not to use illegal drugs while holding a security clearance. However, the concerns regarding the Individual's honesty in connection with her one-time use of marijuana under the circumstances discussed above have been resolved. *See Personnel Security Hearing (Case No. TSO-00103)*, 29 DOE ¶ 82,765 at 85,590 (2004) (Hearing Officer finds that individual has not engaged in unreliable or untrustworthy behavior solely because "he knew illegal drug use is against DOE policy" by signing security acknowledgment form). In sum, I find that the Individual has resolved the security concern raised by the Criterion L derogatory information.

⁶ The Notification Letter does not reference the failure to provide this information. Nevertheless, I have chosen to address the failure to reveal this information in the 2000 PSI

⁷ The clinical psychologist's report found that "there is nothing in the test data to indicate that [the Individual] would not be honest, reliable or trustworthy . . ." Ind. Ex. H-1 at 5.

VI. CONCLUSION

As explained above, I find that the Individual has resolved the security concerns under Criteria L and K relating to the Individual's admitted use of marijuana and her failure to reveal her husband's involvement with illegal drugs. I therefore conclude that restoring the Individual's access authorization at this time "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: June 24, 2008

